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CURRENT TOPICS

The Legal Aid Bill

AFTER an uneventful Committee stage, of which an account appears at p. 473, *post*, the Legal Aid and Advice Bill was read a third time in the House of Lords on 19th July, and now awaits the Royal Assent. In moving the Third Reading the LORD CHANCELLOR said that he believed it had been introduced with the complete goodwill of both branches of the profession in this country and that both branches were determined to do everything they could to make the scheme a success. He disclosed that he proposed to promulgate regulations enabling certain officials of local committees (e.g., chairmen and vice-chairmen) to grant emergency certificates in urgent cases—in particular, where a magistrate who is hearing a case recommends that legal aid should be granted. In a proper case the magistrate would be able, if necessary, to obtain the grant of an emergency certificate by telephoning one of the designated officials. The Lord Chancellor also made it clear that the rules governing the duties of probation officers would be extended by the Home Secretary so that, where necessary, and particularly in matrimonial cases, the services of a probation officer will be available to the local committee. This arrangement would enable the committee to adjourn a case where desirable in order that the probation officer might make inquiries.

The Reign of Law

AT about the same time as LORD MONTGOMERY was telling newspaper correspondents that as Chief of Staff of the Western Union powers he was an international soldier, a wider aspect of the modern surrender of sovereignty to international authority was being discussed by the Grotius Society. On 9th July Judge HSU MO, of the International Court of Justice, stated to that society his conviction that the day was bound to come when states would be gradually inclined by sheer necessity to surrender more and more of their sovereign power to world organs established by their common consent. Mr. Justice HODSON had said at a dinner of the Society on 8th July that in the ability of lawyers brought up under different systems of laws to speak the same language lay a great hope that the world might learn to live together voluntarily under the reign of law. Sir ARNOLD MCNAIR said that what was required was a body of lawyers who were likely to be briefed or consulted on questions of international law in the same way that many lawyers on the Continent were consulted, and he would like the Grotius Society to establish a tradition in giving opinions on international law in the same way as was done in the past by Doctors' Commons.

Notification of Appearance to High Court Writ

SOME inconvenience has been caused, according to representations made by the Council of The Law Society to the Senior Practice Master of the Supreme Court, owing to the abandonment in 1931 of the practice instituted in 1915 by the Central Office of giving notice of a defendant's appearance. The reasons given for the abandonment of the practice were that it entailed much work, and that in view of the introduction of r. 8A the provision might well be contrary to Ord. 12. According to the July issue of the *Law Society's Gazette*, the reason for the Council's representations was that plaintiffs' solicitors not infrequently make applications to sign judgment owing to the defendant's failure to notify them that he has entered an appearance. This generally entails a fruitless journey on the part of the solicitor's clerk. The Senior Practice Master has said that if the Council can produce evidence that the profession as a whole are inconvenienced by the present arrangements he will not oppose a request that the rules should be amended so as to allow the Central Office to notify the plaintiff or his solicitors of an appearance entered by the defendant in person. The *Gazette* invites members to communicate with the Secretary if they should be able to say from their own experience that an amendment to the rules is desirable.

Mayors and Recorders

A SMALL storm has been raised by the proposal in the Justices of the Peace Bill that separate commissions of the peace should be abolished in non-county boroughs. Sentiment for traditions and ancient survivals seems to be ranged against efficiency and economy. The most moderate case for abolition was put by Sir LEO PAGE in *The Times* of 11th July, when he pointed out that the Roche Committee had proposed abolition of separate commissions in boroughs of less than 25,000 people. "Clearly," he wrote, "there is room for discussion where the line is to be drawn." On the other side were the expressions of opinion by the MAYOR and DEPUTY MAYOR OF WINCHESTER in *The Times* of 29th June and 13th July, who pleaded for tradition and ceremony, by THE BISHOP OF WINCHESTER, and by EARL WAVELL, who spoke in the House of Lords debate on 12th July as a freeman of the City of Winchester and High Steward of Colchester, and cited the refusal of his ancestor Thomas Wavell, then mayor of Winchester, to deliver up to James II the city's charter for revocation. Modified opposition came from VISCOUNT TEMPLEWOOD in the same debate, when he admitted the need to abolish separate commissions but said

that the claims of history and tradition could not be ignored. LORD ROCHE regarded the provision for abolition of borough quarter sessions as deplorable and wrong. LORD GODDARD said that the proposal to abolish borough quarter sessions had caused alarm and despondency at the bar, not because the bar saw some emoluments vanish but because of the confusion and difficulties it would cause in the counties. Most counties carried on quarter sessions with public-spirited members of the bar who gave their services freely and without remuneration. If this proposal went through many would not be able to give up the time to deal with the added work. The only practical basis was that of population.

Advertising

THE Disciplinary Committee have held that it is a " manifest breach " of r. 1 of the Solicitors' Practice Rules, 1936, for a solicitor to advertise in the local press that, owing to an increase in pressure of business, he had disposed of his practice at a stated address and would thereafter continue to practise elsewhere, " specialising in his company and commercial interests, but also continuing to discharge the duties of his personal trusteeships and other personal interests." The advertisement further stated, according to the July issue of the *Law Society's Gazette*, that he had, at the request of his successors, agreed to be available in a consulting capacity in any case where such might be desired, and where he felt free and able so to act. It is important that solicitors should appreciate that r. 1 is applied strictly, and all advertising which invites business, whether in express language or by implication, is an infringement of the rule.

Occasional Practice and the Practising Certificate

A NEW regulation (2 (iii)) as to annual subscriptions has been made by the Council of The Law Society providing: " For members who have been members of the Society for not less than forty years and have either (i) ceased to take out a practising certificate, or (ii) having retired from general practice, still continue to take out a practising certificate only for the purpose of acting as commissioners for oaths, or of conducting occasional business for their relations and personal friends, or for sentimental reasons, with the prior consent of the Council in each individual case, 10s. 6d." Here is official recognition of the fact, known to all solicitors, that the profit motive is not always behind the work undertaken by solicitors, and that any alteration of the scales which would impliedly recognise that it is, is wrong. It is to be hoped that if any such change takes place the clearest and most comprehensive provision will be made for cases in which solicitors may properly relax their usual charges.

S.1 Claims: Acknowledgment and Further Information

THE Central Land Board believe that they have now completed the work of acknowledging the 930,000 claims on the £300,000,000 fund for loss of development values. They point out that where agents have been employed acknowledgments have been sent to them. Claimants or agents who have not received an acknowledgment should communicate with the Board's Regional Office at once. The Board also state that a very large number of claim forms have been found to give insufficient information to enable development value to be assessed. They therefore propose to ask for any necessary further information in accordance with the Claims for Depreciation of Land Values Regulations, 1948, under which claimants are required to give the Board such further information as the Board may by notice in writing require within such period not less than thirty days as the notice may specify. Compliance with this provision is a condition of the right to receive a payment, and failure to comply promptly will entail the rejection of the claim.

Recent Decisions

In *Ewart* v. *Hornsey College*, on 11th July, at Clerkenwell County Court, His Honour Judge BLAGDEN held that a clause in a school prospectus requiring payment of a term's or half a term's fees in lieu of notice was a penal clause and enforceable only to the extent that the actual damage suffered by reason of the breach of contract could be recovered.

In *Woodcock* v. *Oliver*, on 11th July, the Court of Appeal (the MASTER OF THE ROLLS and SOMERVELL and DENNING, L.JJ.) held that there was no consideration for a cheque drawn in favour of B by the sister of a girl who was engaged to be married to A, who in fact was already married but had borrowed money from B on the pretence that he was trying to buy the matrimonial home. The court held that the words " antecedent debt or liability," which may constitute valuable consideration within s. 27 (1) of the Bills of Exchange Act, 1882, means an antecedent debt or liability of the person who actually draws the bill. The court held that it would not include an antecedent debt or liability of a third person unless the person receiving the cheque had altered his legal position in reliance on it.

In *R.* v. *Way* and *R.* v. *Sherman*, on 11th July (*The Times*, 12th July), the Court of Criminal Appeal (the LORD CHIEF JUSTICE and STREATFEILD and DEVLIN, JJ.) held that a clerk and an office manager were not guilty of aiding and abetting their employers, a company carrying on a betting business, in the offences of using an office for the purpose of betting with persons resorting thereto and of using that office for the purpose of money being received in respect of bets on horse races. Runners had collected from the company's offices betting clocks which were receptacles for betting slips and recorded the times when the slips were received, and later in the day returned the clocks with the betting slips in them. The court held that the runners made the bets outside the company's office as agents for the company and merely resorted to the company's office for the purpose of giving an account of their transactions.

In *R.* v. *Clarke*, at Leeds Assizes, on 13th July, BYRNE, J., held that a man who had been legally separated from his wife could be convicted of committing the offence of rape upon her. The accused was acquitted.

In a case in the Court of Criminal Appeal, on 13th July (*The Times*, 14th July), the LORD CHIEF JUSTICE quoted with approval the *dictum* in *R.* v. *Carpenter* (1911), 22 Cox C.C. 624, in which Channell, J., said in a case of false pretences that if a person charged made a statement dishonestly with the intention of inducing persons to deposit money, his intention to repay the money so obtained or his honest belief, or even a good reason for his belief, in his ability to repay was no defence.

In *Re Dunn*, on 13th July, the Court of Appeal (the MASTER OF THE ROLLS and SOMERVELL and DENNING, L.JJ.) held that a debtor who had filed his own petition in bankruptcy after a betting debt claim had been made against him and who earned only £8 a week, which was just sufficient for the maintenance of himself and his family, and had no debts other than that in respect of which the claim was made, was entitled to do so and to have a receiving order made against him, and the filing of the petition was not an abuse of the process of the court.

In a case in the Court of Criminal Appeal, on 15th July (*The Times*, 16th July), the LORD CHIEF JUSTICE said, in giving the judgment of the court, that s. 29 of the Criminal Justice Act, 1948, introduced a new procedure by which, if justices, having convicted a person summarily of an indictable offence, were of opinion that greater punishment should be inflicted upon him than they had power to inflict, they might commit him in custody to quarter sessions for sentence. In such a case he was for all purposes to be considered as having been convicted on indictment, and could appeal to the Court of Criminal Appeal. Furthermore, he became subject to s. 22 of the Act, which required a court, in certain circumstances, to order a person convicted on indictment and sentenced by the court to twelve months' imprisonment or longer to report to a society for twelve months after his discharge from prison.

THE LEGAL AID BILL

COMMITTEE STAGE IN THE LORDS

IT is now known that the Legal Aid Bill will reach the statute book in its present form; it emerged unamended from the Committee Stage and the Third Reading in the House of Lords on 11th and 19th July.

Only two amendments were moved in Committee, both had been discussed at earlier stages and neither was pressed to a division. The first, moved by Lord Templewood and supported by Lords Calverley, Merthyr and Roche, sought to make the magistrates and not the certifying committees the authorities for granting legal aid in civil proceedings before magistrates. This change was said to be supported by the Magistrates' Association and the Justices' Clerks' Association, but opposed by The Law Society and the Bar Council. The main argument in its favour, most persuasively expressed by Lord Templewood, was that the local magistrates would act much more expeditiously than a legal committee probably in a remote town. Lord Calverley, in a forthright speech, suggested that this solution would also be cheaper and he launched into a surprising attack on The Law Society which, he seemed to think, was wasting money by appointing and training area secretaries and their assistants. In our previous article (at p. 441, *ante*) we questioned whether Lord Calverley, when advocating this solution during the Second Reading, had considered how the means of the applicant and the extent of his contribution would be assessed, but he now made it clear that he was prepared to allow the magistrates to undertake this task also. It is not surprising that the Lord Chancellor reacted unfavourably to this suggestion. He pointed out that close financial control over the Scheme was essential and that while he could exercise this over The Law Society and its committees he would lose control if magistrates were empowered to grant civil aid also. Moreover, the suggestion was unsatisfactory on other grounds. Why limit the power to magistrates' courts? It would be argued next that it should apply also to county courts and the High Court; in other words, that the whole of the civil aid scheme should be abandoned and the criminal aid scheme substituted for it. Further, it would destroy any possibility of uniformity throughout the country, and, finally, would compel magistrates to grant aid to both parties if they granted it to one, since otherwise the other would think the court prejudiced against him. On the other hand, the Lord Chancellor appreciated that speed was vital and he proposed to ensure that the Scheme provided for the grant of emergency certificates by certain members of the committee which would entitle the applicant to immediate legal assistance pending full investigation by the whole committee and the National Assistance Board. If necessary these emergency certificates would be granted as a result of applications by telephone. These arguments were supported by Lord Rushcliffe (happily sufficiently restored to health to be present at the final stages of the birth of his child) and by Lord Mancroft, and the amendment was ultimately withdrawn.

The other amendment, less strenuously pressed, was moved by Lord Reading, and would have included actions for defamation within the scope of the Scheme. Having secured an undertaking from the Lord Chancellor that he would extend the Scheme by regulation to include such actions so soon as experience had shown that this could be done without overburdening the Scheme or making it too expensive, Lord Reading happily withdrew the amendment.

Two further points were made during the course of the discussion. The first, by Lord Mancroft, was that as yet the benefits of the Scheme were little understood by the public and that full information about it should be given in simple language before it came into operation. The second, by Lord Maugham, was that the regulations should make it clear that only in very exceptional circumstances should aid be granted to a litigant to enable him to appeal (as opposed to defend an appeal) to the House of Lords or Judicial Committee. The Lord Chancellor expressed agreement with both points. As regards the former, may we respectfully express the hope that if a wireless broadcast is decided upon the B.B.C. will ensure that someone is selected who will explain the Scheme in rather more homely and arresting terms than those normally adopted by the anonymous "lawyers" generally entrusted with legal broadcasts? Apart from such a broadcast, the great need seems to be to ensure that explanatory pamphlets are always available at municipal offices, police stations, courts, and Citizens' Advice Bureaux and that their existence is prominently advertised. This is, of course, a continuing need which an initial broadcast or newspaper advertisement cannot meet. As regards the second point, there can be little doubt that Lord Maugham is right, though it may disappoint those who have seen in the Bill an opportunity of testing the correctness of some of the less happy decisions of the Court of Appeal!

L. C. B. G.

THE JUSTICES OF THE PEACE BILL

DURING the last few years the whole system of the magisterial administration of justice has been the subject of the closest scrutiny. In 1938 the Home Secretary appointed a departmental committee under the chairmanship of Roche, L.J., to inquire into the conditions of service, and the duties, of justices' clerks, and in 1946 His Majesty appointed a Royal Commission over which du Parcq, L.J., presided, to advise on the appointment and removal of justices of the peace and generally as to their functions and duties. The Justices of the Peace Bill, which is now before Parliament, is intended to implement some, but by no means all, of the recommendations made by these bodies.

The Bill in no way proposes to alter the present system of appointments to the Commission of the Peace, nor does it so much as mention the advisory committees which at present advise the Lord Chancellor. Whether or not any steps will be taken, in view of the du Parcq Report, to ensure that appointments to the Commission of the Peace are made without political bias, remains to be seen, but if any action is taken in that direction it will presumably be administrative only, since no statutory provisions are, apparently, contemplated.

The Bill, however, aims to preserve and, in fact, to amplify the "local" nature of courts of summary jurisdiction, since it provides (cl. 1) that no one shall either be appointed to the Commission of the Peace or, if so appointed, act as a justice unless he resides in or within seven miles of the area for which he is appointed. The Lord Chancellor, however, will have a limited power to waive this disqualification in a proper case, and certain high judicial officers (e.g., judges of the High Court) are in any event exempted from its operation. Hitherto, county justices have been subject to the same residential qualifications on appointment, but subsequent removal outside the seven-mile limit has not entailed any disqualification.

Justices who are members of a local authority are to be absolutely prohibited, by cl. 2, from sitting in any case in which that local authority or any of its committees or officers is a party. Hitherto, the law in this respect has not been free from doubt, and the section introduces a much-needed clarification.

Clause 3 of the Bill deals with the highly controversial question of the supplemental list; this was first introduced by the Justices (Supplemental List) Act, 1941, which is now to be repealed. Instead, the new Bill provides, in effect, for the preparation of a supplemental list for each area under rules to be made by the Lord Chancellor, and for the entry on that list of the names of all justices who are seventy-five years of age or more, or who apply to have their names entered

on it. Further, with or without the justice's consent, the Lord Chancellor is to have power under the Bill to place on the supplemental list any justice who is ineffective either by reason of age or infirmity, or because he fails to take a proper part in the exercise of his duties.

In order not unduly to denude a bench of experienced justices, during the first five years after the Bill comes into operation the Lord Chancellor is to have power to exempt certain justices from the operation of the age limit of seventy-five years; at the end of the period of five years, however, disqualification at seventy-five is to become absolute.

These provisions as to supplemental lists are to apply not only to justices who are appointed by the Commission of the Peace, but also to mayors and chairmen of local authorities, but they will not apply to High Court judges and some others who by virtue of their judicial office are *ex officio* justices of the peace.

Justices on the supplemental list are to be disqualified from acting in any manner as a justice of the peace, except that they may witness signatures, authenticate declarations not made on oath, or give certificates—in every case limited to documents "not intended primarily for use in connection with legal proceedings."

At present, though there are statutory restrictions on the practice of a solicitor who is a county justice, there are none on the borough solicitor-justice, although the latter is invariably required to give an undertaking to the same effect. Clause 5 of the Bill proposes to remove this anomaly by prohibiting any solicitor-justice and his partners from practising before justices for the same area as that for which he is appointed. This restriction is not, however, to apply to any solicitor-justice whose name is on the supplemental list for that area, or who is merely an *ex officio* justice and excluded from acting as such by a prohibition under s. 4 of the Justices of the Peace Act, 1906.

As regards travelling and lodging allowances, cl. 6 of the Bill follows the recommendations made in the du Parcq Report; payments may be made only where the justice's duties take him more than three miles from his residence, and are to be at rates to be prescribed by regulations made by the Secretary of State. Similarly, by cl. 28, travelling and lodging allowances may be paid to members of probation or case committees constituted under the Criminal Justice Act, 1948, where their duties take them more than three miles from their homes.

It will be remembered that both the du Parcq Commission and the Roche Committee advocated the withdrawal of separate Commissions of the Peace from areas of small population. Clause 8 of the Bill, accordingly, provides that there shall be a separate Commission of the Peace for every county and for every county borough, but not for any other area. The existing petty sessional divisions of counties are to be preserved, and justices for non-county boroughs are to become justices for the county in which their borough is situated. Provisions consequential on changes in Commissions of the Peace are set out in Sched. II to the Bill, which also contains consequential provisions as to coroners.

By way of exemption from the general limitation of the Commission of the Peace to counties and county boroughs, the City of London is to retain its own police courts and quarter sessions, though they may be differently constituted (cl. 9). The functions of the juvenile and domestic courts in the City, however, are to be carried out by metropolitan police magistrates and other justices for the County (not the City) of London. Consequential amendments are made to Pt. III of the Children and Young Persons Act, 1933, and the Summary Procedure (Domestic Proceedings) Act, 1937.

By cl. 10 of the Bill the maximum number of justices sitting to deal with a case is to be prescribed by rules; each petty sessions area is to have a chairman and one or more deputy chairmen, who are to preside if present; and in boroughs the mayor is no longer to have the right, as such, to preside. The general administration of this section is left to the discretion of the Lord Chancellor, who is to have power to make rules for the purpose.

As to juvenile courts, cl. 11 reserves power for rules to be made prescribing the maximum ages at which a justice may be first appointed to or, if already appointed, may continue to remain on, the juvenile panel.

For the purpose of administering the work of the courts, magistrates' courts committees are to be set up for each county and county borough; but two or more counties and/or county boroughs may combine as what is called "a joint committee area" and appoint a single magistrates' courts committee. These committees are to be bodies corporate, and to consist entirely of magistrates of the area concerned; where the area is divided into petty sessional divisions, each such division is to be represented on the committee. Magistrates' courts committees appointed for a county may submit draft orders to the Secretary of State with a view to the division of the county into petty sessional divisions, or for the revision of existing petty sessional divisions; and they must submit a draft order, or a report giving reasons for making no change, if directed to do so by the Secretary of State. Such draft orders or reports are to be made after consultation with the county council and with the justices for any existing petty sessional division in the area.

Justices' clerks are in every case to be appointed by, and to hold office during the pleasure of, the magistrates' courts committee; they are to be paid a personal salary, and provided with accommodation, staff, etc., though in the case of part-time clerks special arrangements as to the latter may be made. Newly appointed justices' clerks are to be subject to approval by the Secretary of State, and a justices' clerk for a petty sessional division may not be removed without the consent of the Secretary of State unless the justices for the division agree to his removal. His duties are to include those of collecting officer, and all orders for the payment of money by one person to another are to direct payment to be made to the collecting officer of that or some other court unless there is good reason to the contrary. Provision is made for justices' clerks in office at the coming into operation of the Act to remain in office under the new magistrates' courts committees.

The qualifications for appointment as justices' clerk are to be altered; under cl. 15 of the Bill solicitors or barristers of five years' standing are to be eligible provided they come within any age limits which may be prescribed; persons who have served ten years or more as clerk or assistant clerk may also be appointed, even though not legally qualified, in special cases, and such persons will be exempt from the upper age limit if they have served continuously since before they attained that age.

Justices' clerks and their assistants are to be superannuable as if they were employees of a local authority, and Pt. I of Sched. IV to the Bill modifies the Local Government Superannuation Act, 1937, accordingly. Any necessary modifications of local Acts are to be effected by order of the Secretary of State.

Salaries of justices' clerks and their assistants, the expenses of the magistrates' courts committee, and office accommodation, etc., are to be paid or provided by the county or county borough council by agreement with the magistrates' courts committee or, in default of agreement, as determined by the Secretary of State.

All fines and moneys payable under an order of a court of summary jurisdiction, other than court or police fees, compensation for loss or injury, damages, costs other than those of the prosecution, and moneys due to the Customs and Excise authorities, are to be paid to the Secretary of State. These sums are to form a fund from which, after deduction of any moneys due to the Exchequer, the Secretary of State is to repay to the responsible authorities all moneys properly expended by them in exercising their functions under the Bill. If in any year the fund thus accumulated during that year is insufficient for the purpose, the Secretary of State is empowered, with the consent of the Treasury, to make a further contribution not exceeding two-thirds of the deficiency, the balance being paid out of the county or county borough funds, as the case may be.

Barristers of seven years' standing, and solicitors of the like standing, are to be eligible for appointment as stipendiary magistrates. This innovation will, no doubt, be particularly welcome to solicitors, who have hitherto been excluded from such appointments no matter what their experience and qualifications may be. Stipendiary magistrates, other than metropolitan police magistrates, are to retire at the age of seventy-two, but may continue to seventy-five if authorised to do so by the Secretary of State. Stipendiary magistrates are to be superannuable at the rate of one-quarter of their salary after five years' service, rising to two-thirds after twenty years' service, thus coming into line with the metropolitan police magistrates, whose pension was fixed by the Police Magistrates (Superannuation) Acts, 1915 and 1929.

Finally, provision is to be made by regulation for compensation to be payable to persons who suffer loss of office or emoluments as a result of the reorganisation to be effected by the Bill.

It will be observed that the Bill aims, *inter alia*, at the removal of magistrates' courts from the direct influence of the local authorities; the magistrates' courts of Middlesex, which since 1938 have been in an anomalous position by reason of the County of Middlesex (Petty Sessional Divisions and Justices' Clerks) Order of that year, will come into line with the courts of the rest of the country by reason of the repeal of s. 57 of the London and Middlesex (Improvements, etc.) Act, 1936, under which the order was made. The measure of independence proposed by the new Bill, though unfortunately not complete, should tend to promote better and impartial justice.

In conclusion, it is intended that the Act shall come into operation on a date or dates to be appointed by Order in Council; and since power is taken to bring the various provisions into effect bit by bit, it will presumably be some considerable time before the whole Act is effective. This may be convenient from an administrative point of view, but many lawyers will feel that the growing practice of piece-meal legislation is to be deprecated.

E. G. B. T.

LOCAL LAND CHARGES—I

THE law relating to local land charges and allied matters is at present in an unsatisfactory state and the Lord Chancellor has set up a departmental committee under the chairmanship of Sir John Stainton, K.B.E., K.C., to review it. The terms of reference of the committee are very briefly—

(1) to review the present system whereunder prohibitions of or restrictions on the user of land imposed by a local authority or by a Government department under certain statutes are registrable in the registers of local land charges;

(2) to consider whether any like matters should be made registrable in the registers of local land charges;

(3) to consider whether—

(*a*) prospective vendors should be obliged to disclose matters referred to in (1) and (2) to their prospective purchasers;

(*b*) any steps should be taken to ensure prompt registration of all matters compulsorily registrable in the registers of local land charges.

The committee is known as the Departmental Committee on Local Land Charges, but it is pertinent to ask whether, except possibly as regards (3) (*b*), it is concerned with local land charges; it will be noted that this term does not appear in the terms of reference except as a description of the register. The question is an important one because, as will be seen later in this article, it may affect the degree of protection which a purchaser may obtain from the registers and certificates of search in them.

Types of existing entries

A local land charge, according to s. 15 (1) of the Land Charges Act, 1925, is a charge acquired by a local authority under the Public Health Acts, 1875 to 1907, the Metropolis Management Acts, 1855 to 1893, or the Private Street Works Act, 1892, or any similar statute, whenever passed, which takes effect by virtue of the statute. These, generally speaking, are financial charges, such as private street works charges. Section 15 (1) goes on to provide that a local land charge, as referred to in the subsection, shall be void against a purchaser for money or money's worth unless registered before completion of the purchase. As originally enacted, therefore, the section did not include as local land charges any of the matters referred to in paras. (1) and (2) of the committee's terms of reference. A new subsection, subs. (7), was, however, introduced into s. 15 by the Law of Property (Amendment) Act, 1926, and this provides that the provisions of s. 15 shall apply to any prohibition of or restriction on the user of land imposed by a local authority *as if it were* a local land charge and that the same shall be registered as a local land charge accordingly. In addition, there is a third class of rights or interests which may be acquired by a local authority but which are neither local land charges, as referred to in s. 15 (1), nor prohibitions or restrictions as referred to in s. 15 (7), but which are specifically made registrable by statute. As an example, s. 39 (2) of the Town and Country Planning Act, 1947, provides that a compulsory purchase order containing power to expedite completion under s. 38 *shall be registered in the register of local land charges;* it will be noted that it does not state that such an order is a local land charge or that the provisions of s. 15 of the 1925 Act shall apply to it as if it were.

Lastly, before examining the existing system of registration, a few words must be said about prohibitions or restrictions on user acquired by Government departments. With exceptions, these are in the same category as the rights or interests mentioned in the third class for local authorities, i.e., in each case there is a specific statutory provision requiring that they be *registered in the register of local land charges* without any more specific statement as to their nature or effect. As an example, supervision orders made by the Minister of Agriculture and Fisheries under s. 12 of the Agriculture Act, 1947, may be mentioned. One exception relates to rights to use and maintain Government oil pipelines given by s. 12 of the Requisitioned Land and War Works Act, 1948; s. 14 of this Act provides that s. 12 shall not apply to any pipeline after 31st December, 1949, unless the rights have been registered in the appropriate local land charges register.

Unfortunately even this variegated collection of matters does not exhaust a prospective purchaser's interest, and requisitions for official searches have had to be supplemented by the approved forms of enquiries of local authorities, with which all readers are familiar.

Having briefly considered the subject-matter of the existing system, we may now go on to consider the system itself and how it can be improved.

Defects of the existing system

The principal defects of the existing system are that, in order to carry out his duty to his client, a solicitor, before exchanging contracts, must, if the land lies in the area of a county borough, complete two forms and, if it lies in the area of an administrative county, no less than four forms, at a cost in the latter case of at least £1; and even after this expenditure his client will have no redress if the information given in reply to half the forms proves faulty, owing to the disclaimer given in respect of replies to the approved enquiries.

The two most urgent tasks facing the committee are, therefore, to devise means whereby—

(1) all the information demanded by a requisition for an official certificate of search and the approved enquiries can be demanded in one document and given in one document, the latter document to partake of the nature of an official certificate so that responsibility cannot be escaped for any inaccuracies in the replies;

(2) in administrative counties, all the information can be obtained in one document from one source, whether that source be the county council or the county district council.

Suggestions for the future register

The second task is a problem simply of administration with which the reader will not wish to concern himself; suffice it to say that it is not an insuperable one. The first task is the more difficult and will require legislation to accomplish. How is it best to set about it? The immediate and easy answer is to say that provision should be made for all matters which are the subject of the approved enquiries to be registered in the register of local land charges. To do this, however, would so completely alter the character of the register that it would no longer be a register of local land charges. As we have seen, there are matters registered in this register already which are not local at all in the sense that they are acquired by any local authority. The first thing to do, therefore, is, it is suggested, to change the title of the register to "Local Register of Land Charges and Liabilities." The register would then be divided into parts on the following lines (reference is made in parentheses to the approved forms of enquiries):—

Part I.—Land charges acquired by local authorities.—This would include all local land charges as defined in the Land Charges Act, 1925, as amended by the Law of Property (Amendment) Act, 1926, and the Town and Country Planning Act, 1947, excluding any conditions imposed on a planning permission (these will appear in Pt. VI and it is unnecessary that they should appear in both parts) but including—

(*a*) agreements under s. 34 of the Town and Country Planning Act, 1932, or s. 25 of the 1947 Act (Question 9 on Con. 29A, 6 on 29B, 9 on 29C);

(*b*) any of the matters outstanding under para. 7 of the 1947 Act (Question 10 on 29A, 7B on 29B, and 10 on 29C);

(*c*) any direction under art. 4 (1) or 4 (5) of the General Development Order, 1948 (Question 11 on 29A, 8 on 29B, and 11 on 29C);

(*d*) any compulsory purchase order made by a local authority (Question 12 on 29A, 9 on 29B, and 12 on 29C);

(*e*) charges under s. 8 (3) (*d*) of the Agriculture (Miscellaneous Provisions) Act, 1941 (in Pt. V of the existing register);

(*f*) restrictions under s. 30 of the 1947 Act (in Pt. X of the existing register);

(*g*) automatic restrictions under s. 2 of the Restriction of Ribbon Development Act, 1935 (Question 2 on 29B).

Part II.—Resolutions of local authorities initiating any matter registrable in Part I.—These resolutions would not require registration where the matter they relate to has become registrable before the date on which the new register is set up (Question 1 (B) and 12 (part) on 29A, 1 (B), 9 (A) and 11 on 29B, 5 (B) (part) and 12 (part) on 29C).

Part III.—Price and rent controls.—Any maximum selling price and rent under the Building Materials and Housing Act, 1945, as extended; any standard rent required to be registered by a local authority under the Rent Restrictions Acts; any rent of a furnished letting fixed by a rent tribunal.

Part IV.—Properties registered as decontrolled under the Rent Restrictions Acts (Question 4 on 29A, 6 on 29C).

Part V.—Resolutions approving proposals for insertion in development plans. Operative development plans (Question 7 on 29A, 4 in 29B, and 7 in 29C).

Part VI.—Planning applications and advertisement applications (Question 8 on 29A, 5 (B) and 10 (B) on 29B, 8 on 29C).

Part VII.—Properties in respect of which compensation has been paid under s. 20 of the 1947 Act (Question 12 on 29B).

Part VIII.—Permissions and refusals relating to the discharge of trade effluent into sewers. Any local enactment, statutory scheme or order relating to combined drains or agreements within the meaning of s. 24 of the Public Health Act, 1936 (Questions 2 and 3 on 29A, 3 and 4 on 29C).

Part IX.—Land charges acquired by Government departments and new towns corporations.—These would include compulsory purchase orders made by such departments or corporations.

Part X.—Any formal statutory step required to initiate any matters in Pt. IX, e.g., the publication of notice of a draft compulsory purchase order.

Part XI.—Highways maintainable at the public expense (Question 5 (A) on 29A, 1 (A) on 29B and 29C).

Part XII.—Public sewers (Question 1 on 29A, 3 on 29C).

The foregoing cover both present entries in the local land charges registers and the matters dealt with by the approved enquiries, except the enquiry as to whether any notices have been issued other than those shown in the certificate of search (Question 6 on 29A, 3 on 29B, 2 on 29C) which is in too general terms to be satisfactorily dealt with in a register. They also cover some important matters not at present dealt with, such as rents of furnished lettings and preliminary steps in the acquisition of charges by Government departments. The parts suggested are not necessarily comprehensive but indicate that it is practicable to design some satisfactory method of combining all matters in which a purchaser may be interested in a statutory register. An Act of Parliament would be required for setting up the register but no doubt details would be left to be settled by statutory instruments or rules.

In response to a requisition there would be disclosed any entries in Pts. I to X affecting the property and in the case of Pt. V details as to how the property is affected; in the case of Pts. XI and XII the certificate would show whether the highways adjoining the property were maintainable at the public expense and the distance to the nearest public sewer if one is available.

The list may look formidable but the key to the whole matter is to have a satisfactory index map by which properties may be keyed to entries in the register affecting them, and, given this and adequate local knowledge by the officers in charge of the register, there is no reason why the suggested arrangements should not function satisfactorily.

The existing protection of purchasers

What is to be the degree of protection afforded by the official certificate?

At present a controversy is in full swing as to the degree of protection afforded under the existing system, and here we must take up again the different types of statutory provision relating to entries referred to at the beginning of this article. Where the matter is a local land charge as defined in s. 15 (1) of the 1925 Act or is made registrable *as if it were*, then—

(1) any matter which should have been registered but is not is void against a purchaser for money or money's worth (s. 15 (1));

(2) an official certificate is conclusive in favour of a purchaser, affirmatively or negatively, as the case may be (s. 17 (3) as applied by r. 15 of the Local Land Charges Rules, 1934);

(3) a solicitor or a person in a fiduciary position is not answerable for any error in the certificate (s. 17 (7), (8) and (9), as applied by r. 15).

Where, however, the statutory provision only provides that the matter is *to be registered in the register of* local land charges, and provision is made by rules separate to the 1934 rules for the creation of a new part of the register (as in the case of Pts. VI to X inclusive of the existing register), then it is said that—

(*a*) the matter is not void, if not registered, against a purchaser for money or money's worth, for it does not become a local land charge within s. 15 (1);

(*b*) the official certificate is no protection to an ordinary purchaser but only to a solicitor or person in a fiduciary

position, as the rules constituting these parts do not apply s. 17 (3) to these parts although they do apply s. 17 (7), (8) and (9).

It seems, however, to be arguable that if a matter has to be registered in the register of local land charges it must of necessity be a local land charge for all the purposes of s. 15; and that, if it is a local land charge for the purpose of s. 15 (6), which gives the Lord Chancellor the power to make rules, it must also be one for the purpose of s. 15 (1). To take an example, s. 39 (2) of the Act of 1947 provides that a compulsory purchase order including power to expedite completion shall be registered by the proper officer in the register of local land charges *in such manner* as may be prescribed by rules made for the purposes of this section under s. 15 (6) of the Land Charges Act, 1925. Section 15 (6) provides that "Separate rules may be made under this Act in reference to local land charges for giving effect to the provisions of this section and in particular" for prescribing the mode of registration, proper officer, effect of the official certificate, and fees. This wording lends support to the argument that such a compulsory order is void under s. 15 (1) if not registered.

Secondly, it is strongly arguable that the 1934 rules applying s. 17 (3) of the 1925 Act, making an official certificate conclusive, apply to all parts of the existing register including Pts. VI to X. Rule 15 of the 1934 rules applies, *inter alia*, this subsection generally to "registries of local land charges" and, for example, s. 39 (2) of the 1947 Act giving power to make rules as to the *manner* of registration cannot give power to vary the general rules already made. The provisions made, therefore, in the separate sets of rules governing Pts. VI to X, purporting to govern the effect of the official certificate, may well be *ultra vires*.

However, even if s. 15 (1) and the provisions of s. 17 (3)—and the latter are largely complementary to the former and of no great use by themselves—do not apply to matters registrable in Pts. VI to X, the purchaser still seems adequately covered, for he will have an action for statutory negligence against the Minister or authority responsible for creating the matter, or the registrar. To take s. 39 (2) of the 1947 Act again as an example, it provides that *it shall be the duty* of the local authority making the order, as soon as may be after the order has become operative, to notify the proper officer to register it.

A breach of this duty would be actionable at the suit of a searcher who is clearly within the class for whose benefit the duty was imposed; the words "as soon as may be," however, import a dangerous gap. Equally, if the authority had notified the fact to the proper officer and he failed to make the entry or, having made it, to disclose it, there would be an action for negligence against him.

The suggested future protection of purchasers

The foregoing, to say the least, discloses that the existing law as to the purchaser's protection is in an unsatisfactory state. What of the future?

In the writer's opinion, a purchaser should be satisfied with an action for damages for failure to notify, to register, or to disclose a registrable matter. It will not be practicable nor in the public interest to provide that a registrable matter shall be void in most cases, and this is particularly so if requisitions for an official search and the approved enquiries are to be combined. For example, it would be of little use to provide that a compulsory purchase should be void, for the authority could simply make another order. Most of the matters are imposed in the public interest and it would be wrong for the public to suffer, e.g., by a person being allowed to disregard conditions on a planning permission or restrictions on the height of buildings in the neighbourhood of an airport, for the benefit of one individual if the latter can be compensated in money. A purchaser with an action for negligence should be amply safeguarded.

Three matters require attention, first, to ensure by a system of priority notices that there is no time-lag between the matter arising and its registration; secondly, to make the registrar's authority liable in the case of any failure to make an entry or disclose it, and not the registrar himself: although it is quite usual for registrars to insure, it might be that they would not be able in every case to meet a claim for damages; and thirdly, to make it quite clear that for the purpose of any action for damages against the authority maintaining the register the official certificate shall be conclusive.

R. N. D. H.

A Conveyancer's Diary

TRESPASS AND THE DEFENCE OF TENDER OF AMENDS

I do not know whether a knowledge of "Forensic Fables" is still regarded as a necessary element in the complete education of a lawyer; I suspect not, and it may well be that not all my readers will recall the fable of the eminent real property lawyer for whom trespass held no terrors at all. It was this learned gentleman's habit, after a week of labour in Lincoln's Inn, to refresh himself on the Sunday by taking a walk in the countryside. He was no respecter of other people's property, and in particular it was his delight, if his attention was drawn to the fact that he was on private land, to point out with all the assurance that a life-long study of real property law had given him, the utter impossibility of putting into effect the hollow warning to be found on the notice board at the edge of the road that "Trespassers will be prosecuted." Our lawyer met his match, of course. One day when he had taken a long walk across somebody's park and was on the point of leaving it for the high road he was confronted by a burly gamekeeper who refused to listen to his expostulations, or to accept the tender of sixpence offered him in recompense of any damage the learned trespasser had done; instead, the gamekeeper frog-marched him back to the point at which he had entered the park, causing him to miss his train and suffer other inconveniences, of which the interested reader must look for details in the book. For the ultimate fate which befell our friend is not in point here: what we are concerned with is the tender of a nominal sum by a trespasser as amends for a trespass, and the common belief that such a tender is a good defence in all actions for trespass where no extraordinary damage can be proved.

I say "belief" because in spite of the high authority which the opinions of the author of "Forensic Fables" carry, I do not think that reliance on this line of defence is anything more than illusory. My reason for this statement is to be found in s. 5 of the Limitation Act, 1623 (not repealed by the Limitation Act, 1939, or so far as I know by any other enactment) which is in the following terms:—

> "In all actions of Trespass *quare clausum fregit* hereafter to be brought, wherein the Defendant or Defendants shall disclaim in his or their Plea to make any Title or Claim to the Land in which the Trespass is by the Declaration supposed to be done, and the Trespass be by negligence or involuntary, the Defendant or Defendants shall be admitted to plead a Disclaimer, and that the Trespass was by negligence or involuntary, and a Tender or offer of sufficient Amends for such Trespass before the Action brought, whereupon or upon some of them, the Plaintiff or Plaintiffs shall be forced to join issue; and if the said issue be found for the Defendant or Defendants, or the Plaintiff or Plaintiffs shall be non-suited, the Plaintiff or Plaintiffs shall be clearly barred from the said Action or Actions and all other suits concerning the same."

Translated into terms of modern pleading and proceeding, this section means that in a case of trespass to land being "by negligence or involuntary" the trespasser is at liberty to plead by way of defence that he tendered sufficient amends for the trespass before the issue of the writ, and if such a defence is set up the question whether tender was made, and also presumably whether it was sufficient, is to be decided as a preliminary point. If the finding is in the defendant's favour on this point, the action must be dismissed. But this special defence is open only where the trespass is "by negligence or involuntary," and these words have received a strict interpretation.

The authority on this point is *Basely* v. *Clarkson* (1682), 3 Lev. 37, in which the plaintiff pleaded that the defendant had broken his close "called the balk and hade" (i.e., a bank or strip of unploughed land separating his land from the defendant's) and had cut his grass and carried it away. The defendant's case was that he, the defendant, had a "balk and hade" adjoining that of the plaintiff, and that in mowing his own land he involuntarily and by mistake mowed down some grass growing upon the plaintiff's land, intending only to mow his own. The defendant disclaimed any title in the plaintiff's land and pleaded that he had tendered two shillings to the plaintiff and that this sum was a sufficient amends. This was clearly a plea of the statute, but the court would have none of it and gave judgment for the plaintiff on the ground that the defendant's act in mowing was voluntary, and that his intention and the fact that he was mistaken was immaterial ("not traversable") as they could not be known.

This decision may appear at first sight to be unduly narrow and to destroy most of the utility of the provision as to the special defence of tender of amends. But trespass is actionable without proof of special damage; damages are normally available to the plaintiff as an assuagement of his feelings, whether he has suffered actual damage or not, and the introduction of this special defence of tender of amends does trench to some extent on this essential characteristic of the action of trespass.

It was, therefore, not surprising that the common law courts should have eyed the defence of tender of amends askance, and taken the first opportunity (as was done in *Basely* v. *Clarkson*, *supra*) to confine this innovation within the closest limits.

Once it is conceded that, if the initial act is a voluntary act, ignorance of its consequences is no defence for this purpose, it is obvious that the occasions on which a defence based on s. 5 of the Limitation Act, 1623, can be successful will be very rare. The learned editors of Bullen and Leake (6th ed., p. 920) include a form for a defence in an action for trespass of disclaimer of title and tender of amends, but expressly limit its applicability to trespass by cattle; and that would seem to be the only case in which such a defence can now be successfully set up. It appears useless, therefore, to follow the example of the real property lawyer in the fable and tender amends for walking across a private field or park; even a belief that in doing so one is on common ground, or exercising a public right of way, will not avail if the belief is mistaken.

"A B C"

Landlord and Tenant Notebook

AGRICULTURAL HOLDINGS: ARBITRATION OR LITIGATION

ANYONE who has occasion to consider whether a dispute between a tenant farmer and his landlord should be decided by an action at law or by arbitration under the Agricultural Holdings Act, 1948, will feel disposed to compare s. 70 (1) of that statute with s. 16 (1) of the repealed Agricultural Holdings Act, 1923. In my submission, the usefulness of such a comparison may easily be exaggerated, though casual perusal suggests that the main difference is one of approach.

Setting them out, the Agricultural Holdings Act, 1923, s. 16 (1), ran: "Any question or difference arising out of any claim by the tenant of a holding against the landlord for compensation payable under this Act, or for any sums claimed to be due to the tenant from the landlord for any breach of contract or otherwise in respect of the holding, or out of any claim by the landlord against the tenant for waste wrongly committed or permitted by the tenant, or for any breach of contract or otherwise in respect of the holding, and any other question or difference of any kind whatsoever between the landlord and the tenant arising out of the termination of the tenancy of the holding or arising, whether during the tenancy or on the termination thereof, as to the construction of the contract of tenancy, and any other question which under this Act is referred to arbitration, shall be determined, notwithstanding any agreement, etc., by a single arbitrator, etc."

The Agricultural Holdings Act, 1948, s. 70 (1), says: "Without prejudice to any other provision of this Act, any claim of whatever nature by the tenant or landlord of an agricultural holding against his landlord or tenant, being a claim which arises (*a*) under this Act or any custom or agreement; and (*b*) on or out of the termination of the tenancy of the holding or part thereof, shall, subject to the provisions of this section, be determined by arbitration under this Act."

Apart from the very noticeable difference in length, perhaps the most important change is the limitation in the new provision by which only claims arising on or out of the termination of tenancies are compulsorily referred. True, the new provision postponing claims for dilapidations till the end of the term (s. 57 (3)) makes the change slightly less drastic than might appear, but what one may well think has happened is that the Legislature has profited by the observations made about the old provision in such cases as *Lowther* v. *Clifford* [1927] 1 K.B. 130 (C.A.) and *Olive* v. *Paynter* [1932] 2 K.B. 666 (C.A.).

The old enactment was, indeed, in one respect a series of tergiversations; it reads as if those responsible had been unable to make up their minds on the vital question of scope. Comprehensive expressions such as "any", "or otherwise", "of any kind whatsoever" can be contrasted with words of limitation such as "under this Act" and "in respect of the holding", and the result was that in the two cases just mentioned courts had to consider such questions as whether road charges were covered by a particular tenant's covenant to pay outgoings or whether dilapidations could be recovered in arbitration proceedings though no statutory notice had been given. In *Lowther* v. *Clifford* the conclusion reached was that the section applied only to questions referred to arbitration by other sections and could not affect a covenant dealing with a demand falling from outside; in *Olive* v. *Paynter* the earlier decision was held to imply that any claim which could have been brought at common law was outside the compulsory arbitration code.

This being so, it can certainly be said that the new provision is less ambitious; but regard must of course be had to the phrase "without prejudice to any other provision of this Act", which contemplates such matters as reference of the terms of a tenancy with a view to securing a written agreement (s. 5), arbitrations as to rent (s. 8, s. 9 (4)), or as to compensation for damage by game (s. 14 (2)) and the like; the other qualification, "subject to the provisions of this section", would refer to later subsections which encourage parties to compose their differences by empowering the Minister of Agriculture and Fisheries to extend time, and to the exclusion of claims arising out of tenancies which terminated before 1st March, 1948.

It may be convenient to examine the position by referring

to a passage from the judgment of Scrutton, L.J. (who always felt strongly about ouster of jurisdiction), in *Lowther* v. *Clifford*, in which he asked, rhetorically (p. 141) : " But do they [the words of the old s. 16 (1)] really include a claim for rent, or ejectment, or a dispute whether distress is wrongful or rightful, or an application by a tenant for relief against forfeiture, or by a landlord to enforce the contract of tenancy . . . ? " Clearly, none of these matters arises under the Act or any custom ; a claim for rent arises out of agreement, but cannot be considered to arise on or out of the termination of the tenancy. In ejectment, while the cause of action is brought into being by the termination of the tenancy agreement, the claim is not one arising under agreement : see *Butcher* v. *Poole Corporation* [1943] K.B. 48 (C.A.), strong if indirect authority that leave to proceed is not necessary in possession cases (" Another example is that of a landlord who re-enters on the termination of a lease. He is merely exercising his own proprietary right . . . "). Disputes whether distress is wrongful or rightful are obviously outside the scope of the section, apart from the fact that s. 21 expressly authorises county and magistrates' courts to deal with them. And if the 1923 Act omitted to empower arbitrators to entertain applications for relief against forfeiture that of 1948 has certainly not supplied the deficiency.

R. B.

HERE AND THERE

LORD GREENE'S PORTRAIT

THE lawyers and in particular the judges have ever been good friends to the portrait painters. Their halls have little other adornment than their own and their predecessors' faces and robes done in oils. Robes, a master of the brush once told me, can be a snare and a delusion. They give you a fine showy picture all on their own and a lazy painter can make a grand splash with them and hardly bother about his sitter at all. Anyhow, a painting has a longer expectation of useful life than a law report, in that it is likely to be looked at a good deal longer than most judgments are likely to be looked up. Of recent additions to this two-dimensional immortality Mr. James Gunn's Academy portrait of Lord Goddard is yet fresh in the mind's eye, a Lord Chief Justice perhaps a trifle more rubicund than he generally appears in the King's Bench Division, and wearing an expression as if he were meditating rather on " Albert and the Lion " than the problems of his office, as perhaps he was. Yet fresher is the recently completed portrait of Lord Greene commissioned for the Inner Temple by Lord Goddard, for he is patron as well as sitter. Those who understand these things hail it as an astonishing technical achievement. The brushwork has a quality of Dutch smoothness and finish. So smooth is it indeed that, in the rather poor light in which it has unfortunately been hung in the Niblett Hall, one might think that it had been painted over a photograph. The blending of colours is quite extraordinarily skilful. Perhaps the only criticism one would be inclined to offer is that there is a certain effect of hardness in the treatment which is not a characteristic one associates with the former Master of the Rolls.

MISS GLUCK'S PROBLEM

THE artist is Miss Gluck, of Steyning, in Sussex. Lord Goddard met her through Lord Greene, admired a sketch of him she had done for the Working Man's College in North London, and commissioned her to paint the portrait for the Inner Temple. That was a few years ago now and in the interval she had to solve the problem of painting from memory, for the setting of the portrait was to be the Court of Appeal and, as every newspaper knows, you cannot make photographs or drawings in an English court. A French court may bristle with the cameras of the Press photographers but here the discreetest pencil scratch is technically a contempt, and in these days of equality special privileges would be out of the question. Not so were matters ordered in the spacious days of Queen Victoria when, the Bench and the body of the court being crowded with rank and fashion, for the great *Baccarat* case in 1891, to see rank and fashion and a Royal Personage pass through the witness box, a daughter of Lord Coleridge, C.J., sat near him openly busy on the witnesses with a sketch book. Then Frank Lockwood endlessly caricaturing everyone on the court blotting paper, on odd bits of paper or on his briefs was as immune as the shorthand writer. But now we are more circumspect, and all Miss Gluck could do was to " brood " on her subject for hours on end from the body of the court and jot down her colour notes. The black gown against the scarlet leather of the tall armchair. That was satisfactory. The blue of the Law Notes Rent Restriction Acts answered the bulky whiteness of the Annual Practice. The final result, as I said, is remarkable. Portraits, of course, are not the only line of Miss Gluck. Her " Welshing Bookmaker," I am told, never fails to make Lord Goddard laugh every time he looks at it.

NO MORE RESTRAINT

THE spectacle of the Lord Chancellor and two of his predecessors clashing heatedly over a point of law in a legislative debate was as exhilarating as it was unusual. The battlefield was the Married Women (Restraint upon Anticipation) Bill, designed to loose those bonds of the restraint on anticipation which survived the destroying scythe of the Law Reform (Married Women and Tortfeasors) Act, 1935, the bonds, that is, imposed before it came into force. Lord Jowitt had described the new Bill as " carrying one step further the process of removing inequalities between men and women." Lord Simon described it as a " flagrant example of retrospective legislation " which, far from accomplishing equality, freed the girls of the family while leaving the boys securely tied up with the paraphernalia of discretionary trusts. Lord Jowitt rose in his own defence, while Lord Maugham, charging in on Lord Simon's flank, declared that the restraint on anticipation and the discretionary trust were fundamentally different in character. After a further exchange of shots the Lords gave the Bill a second reading. Now Lord Maugham was in his time that rarest of judicial phenomena, a Chancery Chancellor, and here he was fighting on his own ground. Opinion in Lincoln's Inn is solidly on his side in the controversy, the more so as it viewed with pain the former legislation against the restraint on anticipation. In a little book he published on the Act of 1935 the late Sir Arthur Underhill wrote with a fire rare in text-books. First, he quoted Chitty, J., in *In re Pollard's Settlement* [1896] 1 Ch. 901 (affirmed [1896] 2 Ch. 552), on the jurisdiction of the court to balance " the undoubted benefit of the restraint against the alleged benefit of its removal." Then, he added : " It is all the more astonishing, therefore, that in spite of this judicial utterance, affirmed in no uncertain language in the Court of Appeal, Parliament has in s. 2 of the new Act of 1935 abolished the restraint on anticipation in all wills and settlements after the end of 1935 on some fanciful argument that all distinctions between ' men's property ' and ' women's property ' ought to be abolished. It is anticipated, however, that fathers and their legal advisers will in future wills and settlements neutralise the effect of the abolition of the restraint by the more questionable device of the discretionary trust." No, Sir Arthur did not regard the discretionary trust as, in effect, the same as that unique and ingenuity-proof device the restraint—only as a questionable second best. Lincoln's Inn agrees with Lord Jowitt. Sex equality has now been achieved on the basis of that second best. And the spirit of Sir Arthur sighs once more.

RICHARD ROE.

BOOKS RECEIVED

" So You want to be a Solicitor." " Careers of To-day " Series, No. 6. By G. S. NICHOLSON. 1949. pp. 69. London : Daily Mail Publications. 2s. 6d. net.

Whillans's Tax Tables, 1949-50. By GEORGE WHILLANS, Fellow of the Institute of Bankers. 1949. London : Butterworth and Co. (Publishers), Ltd. 3s. 6d. net.

The County Court Practice, 1949. Edited by His Hon. Judge EDGAR DALE and BRUCE HUMFREY, Group Registrar of Croydon, Dorking, East Grinstead, Horsham and Redhill County Courts. 1949. pp. ccxviii, 1926 and (Index) 160. London : Butterworth & Co. (Publishers), Ltd. ; Sweet and Maxwell, Ltd. ; Stevens & Sons, Ltd. 63s. net.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Minimum Scales

Sir,—I have read Mr. Ball's letter in your issue of the 16th instant and I must state that I am in entire and unqualified agreement with the general conclusion to be drawn from such letter which is to the effect that the fixing of minimum scales of charges in conveyancing matters is a most iniquitous thing.

I will not attempt to aspire to the literary excellence of Mr. Ball's letter, but I can tender views in support of his conclusion, and do so in the form of numbered paragraphs.

(1) Any occupation which is useful will, in any order of society which is capable of being fairly described as substantially free, always render a fair return to persons following that occupation with ability and assiduity. An occupation which depends for its financial reward upon anything savouring of minimum charges is not worthy of being described as an occupation, let alone a profession. Work (properly regarded) is a medium or one of the mediums for justifying our existence on earth. It is not (or should not be regarded as) a thing which we must do in order to live.

(2) No other profession claims the right to lay down willingness to conform to a minimum (as distinct from a maximum) scale as an essential qualification for fitness to practise.

(3) Has any evidence worthy of the name ever been produced to show that solicitors are in fact inadequately remunerated for the work which they do as distinct from showing that some solicitors do not make a great deal of money? No doubt plenty of solicitors do not make a great deal of money from their callings, but I confidently submit that this is not because they are not adequately remunerated. The true explanation is probably a mixture of individual incompetence and what can with fair degree of accuracy be described as vested interests. The young solicitor cannot advertise, he cannot (in effect) lawfully do anything calculated to attract business, and he does not usually number many wealthy persons amongst his associates. These matters, rather than knowledge of and ability to apply the law, appear to be the factors determining success or failure from a financial point of view. Introducing minimum scales will accentuate this evil, not minimise it.

(4) Will the introduction of minimum scales for conveyancing business stop at conveyancing business?

(5) What reason is there, based on either logic or fairness, for assuming that the profession concerned is the proper body to play a major part in laying down minimum (as distinct from maximum) scales of charges?

(6) Is it seriously contended that it should be a professional crime to help people in straitened financial circumstances without making a financial profit? We are, in the opinion of many, getting more selfish with the passing of time, but I think that we will have reached a very sad state of affairs when we cannot (without prior approval) lawfully help with a conveyance at a small fee (say) a young couple who have by dint of effort and sacrifice scraped enough together to find a deposit for a £1,200 house. It may shock some, but I can well imagine circumstances in which it would be a perfectly laudable thing to not only prepare the conveyance for nothing, but also to pay the stamp duty.

(7) Before any minimum scale is brought into force there should be a general referendum to all solicitors taking out practising certificates. The present method of representation is not sufficiently representative on a matter of this importance.

The views of Mr. Ball and myself may savour to some of heresy, but I submit that they are (allowing for necessary generalisation and perhaps odd inaccuracies) basically sound. A maximum scale (increased if the need is shown) fortified by the present Solicitors' Practice Rules appears to be quite adequate. At any rate, we appear to be in quite good company in thinking on these lines (see p. 6 of The Law Society's print of the President's address delivered at the last annual general meeting).

Preston. T. RIGBY.

Appeals from Magistrates

Sir,—Clause 7 of the Married Women (Maintenance) Bill as passed by the House of Commons provides for an appeal from an order of a magistrates' matrimonial court to quarter sessions or on a point of law by case stated to the High Court. On the second reading of the Bill in the House of Lords there was much criticism of this proposal, and most speakers thought there was general satisfaction with the present right of appeal to a Divisional Court of the Divorce Division of the High Court.

I suggest that this is not so. There is considerable dissatisfaction with magistrates' orders in these cases, and in particular many men suffer from a sense of grievance. Quite a number prefer to go to prison rather than pay maintenance under what is considered to be an unjust order.

The Divisional Court at present decides appeals only on the magistrates' notes of the case and the reasons they give for their decisions. It does not see or hear the parties. A litigant appealing from what he considers an unjust order is often not able to come to London and all he may know about the appeal will be contained in his solicitor's letter notifying him of the result. The fact that decisions of the Court of Appeal on appeal from a divorce judge are also given without seeing or hearing the parties is irrelevant. Decisions of a High Court judge who has heard the parties are more readily accepted by both sides than are those of magistrates in these cases.

Lord Merriman, in the Lords, said that he did not believe that appeal was necessary on the question of amount and that the proper way for the dissatisfied man was to go back to the magistrates who made the order. But if they are the same persons they may well not look kindly on the husband who does this, and if his application for variation is refused, he is likely to feel a sense of grievance.

This Bill also authorises magistrates to grant a wife maintenance up to £5 per week instead of the present £2. More cases are likely to come before magistrates, therefore, and the consequences of a wrong order may be more serious to a defendant than at present. The Bill provides for this danger by giving a simple right of appeal to a local court, at which both parties can state their case again. The loser will then be much more willing to accept the decision.

The House of Lords, nowadays, is less often considered to be obstructive and conservative and I trust that on further reflection it will pass cl. 7 as the Commons did. Otherwise I fear the Prison Commissioners will be burdened by still more defaulting husbands. Many magistrates I know share this view.

ROBERT S. W. POLLARD, J.P.,
Chairman,
Westminster, S.W.1. Marriage Law Reform Committee.

Enquiries of Local Authorities: an Enigmatic Reply

Sir,—We recently made certain usual enquiries from a local authority. The reply we received was as set out below on the usual form of acknowledgment. The questions which we asked were not copied on to the form:

Question Number	*Answer*
" 5 "	Nil.
" 8 "	Nil.
" 12 "	See answer to No. 5

There was a note that the nine questions which we had asked were being dealt with on other forms, but the extract set out above composed the whole of the information, and we are still wondering what the exact significance of the answer to question No. 12 was, or whether it was, in fact, merely intended to relieve the monotony.

CLARKE, SQUARE & CO.
London, W.1.

Compulsory Acquisition of Land: Existing Use Value

Sir,—I have seen some discussion in your columns [*ante*, p. 346] of a letter from me to *The Times* of the 30th September, 1948. It would seem that there has been some misconception about my arguments, and that this misconception has increased as a result of *Sampson* v. *Notts. County Council*. May I therefore clear up any doubts.

Prior to the passing of the Town and Country Planning Act, 1947, an arbitrator assessing the compulsory purchase price for a piece of land had to have regard, under the Acquisition of Land Act, 1919, to the "amount which the land if sold in the open market by a willing seller, might be expected to realise." This he did by considering the price paid between a willing buyer and willing seller for similar parcels of land in the neighbourhood.

Since the passing of the Town and Country Planning Act, 1947, there is the additional stipulation that it must be assumed that development permission (other than for the types of development specified in Sched. III of the Act) will be refused.

The existing use value of land is not, and never has been, static, although in the past it has undoubtedly been development value which has shown the greater fluctuation. For example, if the existing use of a parcel of land is for agricultural purposes, expectations about the future trend of food prices would have a marked effect on the existing use value of that land. In addition to this factor there may, in an area obviously likely to be the scene of future industrial or residential expansion, be the belief that it will prove possible to pass some of the burden of development charges on to the public, or that a future Government may revise the Town and Country Planning Act; this belief will, in fact, be taken into account by buyers deciding the amount that they will be prepared to pay for land in the area.

The burden of my argument is that it would not prove possible for an arbitrator charged with fixing a compulsory purchase price, assuming land in the area to be changing hands at a particular range of prices, to determine what part of that price is represented by consideration of existing use value pure and simple, what part by expectations as to future changes in that value, and what part by other expectations.

Furthermore, it is a well-known fact that similar qualities of agricultural land command different prices in different parts of the country. It is not, therefore, possible for an arbitrator to assess the existing use value of a piece of agricultural land in one area where there is a prospect of development, by examining the prices at which similar qualities of agricultural land are changing hands in an area where there is no such prospect of development.

I therefore maintain my contention that compulsory purchase under s. 43 of the Act is not likely to enable the Central Land Board to prevent land changing hands above its "existing value."

PETER W. HODGENS.

London, W.C.2.

[R. N. D. H. writes:—

It appears that Mr. Hodgens' original letter was based on the assumption, which was not clear in it, that the official arbitrator cannot in practice do that which he is in effect told to do by the 1947 Act, namely, to disregard all value except that attributable to existing use. But capital values are normally assessed by reference to rental values and rental values for existing uses, whether the use be agricultural where the land has development value for housing or residential where a house has development value for redevelopment as business premises, should in practice be capable of estimation without taking into account factors which have to be disregarded. An arbitrator under the Agricultural Holdings Act, 1948, should have little difficulty in assessing the rent payable under an agricultural tenancy.

Reference to other transactions is, of course, a valuable method of supporting the value claimed, but only where they are comparable, and most transactions since the 1947 Act will not be comparable, for it is clear that purchasers have not in fact had regard to the assumptions laid down in the Act. *Sampson's* case surely shows that reference to other transactions is of little value to-day, for the claimants could no doubt have produced many examples of similar plots changing hands at far higher values than £17. It would be dangerous to lead a client to expect a higher award than true existing use value, and I still think the Central Land Board's powers, in cases where they are exercised, will prevent land changing hands at more than its value for the existing use, though as mentioned in my original article [92 SOL. J. 609] it may be that a fairly benevolent view may be taken of agricultural values.]

Joint Accounts

Sir,—I sincerely trust that Mr. G. E. Hughes' letter to *The Times* of 16th June [see *ante*, p. 412] will produce some result, because my letter which appeared in THE SOLICITORS' JOURNAL of 14th August last did not, and I still continue to receive circulars, allotment letters, notices, etc., addressed to me personally as the first-named holder without the addition of the names of my co-holders.

The time involved in searching through the numerous estates and settlements of which I am a trustee is very considerable, and could so easily be avoided by a little trouble on the part of the companies, registrars or issuing houses concerned.

ALAN H. HATTON.

Warrington.

Landlord and Tenant (Rent Control) Act, 1949

Sir,—We wish to draw attention to the somewhat strange effect of the "key-money" provisions contained in s. 2 and Pt. II of Sched. I of the above-mentioned Act. The matter can perhaps best be explained by the following three examples:—

In June, 1947, A, B and C each became tenants of unfurnished flats in London. Each of the flats had a rateable value of less than £100 and consequently the Rent Restrictions Acts applied. A took a fourteen years lease direct from the landlord, to whom he paid a premium of £500. B took an assignment from D (the original lessee) of a fourteen years lease, which then had twelve years unexpired, and he paid a premium of £500 to D, who had, however, paid a premium of only £100 to his landlord. C took an assignment from E (the original lessee) of a seven years lease, which then had six-and-a-half years unexpired and he paid a premium of £500 to E. All the respective parties to the two transactions were quite satisfied and everything was straight and above board. A, B and C thought that the premiums which they paid were fairly reasonable having regard to the then current housing situation and they expected that, if they disposed of their respective flats before the situation had greatly improved, they would be able to recover a considerable portion of the premiums from their assignees.

Soon after the Landlord and Tenant (Rent Control) Act, 1949, came into force A, B and C decided to dispose of their respective flats. By virtue of the Act the maximum amount of the premium which A can require from his assignee is about £440, i.e., approximately six-sevenths of the premium of £500 which he had paid to the landlord. In B's case the maximum amount is about £71, i.e., approximately five-sevenths of the premium of £100 which D has paid to the landlord. C, to his amazement, is told that he is absolutely prohibited by the Act from requiring his assignee to pay him any premium whatsoever, that if he does do so he may be fined £100 and ordered to repay the money and that he is not entitled to recover from E any part of the premium of £500 which he paid to him. A, B and C are all advised that in certain circumstances set out in Sched. I to the Act they might be able to obtain a reduction of their rents by what is called "the rental equivalent" of the premiums paid to the landlords but this might help the assignees but will not help A, B and C.

We fail to understand what moral justification there can possibly be for the penalising of C (or even B) in the manner mentioned above. We should have thought that, if anybody should be penalised, it should be D and E, as they were the persons who took advantage of the situation, although what they did was quite legal at the time.

Of course, we may have misinterpreted the Act and we confess that we find some of its provisions very difficult to construe. In particular, s. 2 (2) is, we think, a masterpiece of Parliamentary English.

We should mention that in the above examples we have ignored s. 2 (3) of the Act as it does not afford any help to A, B and C, and can only be of very limited application except, of course, as to apportionment of outgoings.

J. A. PHILLIPS & CO

Southall, Middlesex.

Mr. C. I'A. Carr, solicitor, of Brighton, Worthing and Storrington, former Squadron Leader, has been presented with the Bronze Star Medal for meritorious service while serving with the U.S. Army in Europe from March to November, 1944.

Mr. Paul Simpson, solicitor, of Birkenhead, was married on 9th July at Hoylake to Miss Joan Coffey.

Mr. Aubrey A. Gordon, solicitor, of Houghton-le-Spring, was married on 28th June at Sunderland to Miss Reeve Cohen.

Mr. Gordon L. Lee, solicitor, of Harrogate, was married on 9th July at Oulton to Miss Moira Crowther.

Mr. W. L. Platts, clerk to Kent County Council, has accepted the presidency of the Kent Association of Parish Councils.

NOTES OF CASES

COURT OF APPEAL

CONTRACT: MEASURE OF DAMAGES

Collins *v.* Howard

Tucker, Cohen and Singleton, L.JJ. 30th June, 1949

Appeal from Humphreys, J.

In order to raise money in pursuance of a contract between himself and the defendant, the plaintiff sold some of his Argentine railway shares for £1,042. The contract was, the plaintiff alleged, broken by the defendant, the money raised was no longer needed, and he accordingly replaced his Argentine railway shares, but had to pay £1,288 in order to do so. He contended that the difference between the sale and the repurchase price should be included in the damages which he claimed. Humphreys, J., upheld that contention, holding that the first of the rules laid down by Alderson, B., in *Hadley* v. *Baxendale* (1854), 9 Ex. 341, was applicable, though there were no special circumstances to bring the second rule into operation. The defendant appealed.

TUCKER, L.J., said that the plaintiff had contended that special circumstances existed, from which knowledge could be imputed to the defendant that (i) there was a possibility or a real danger that the plaintiff might have to sell his shares, (ii) that if he sold them he might be desirous of repurchasing them, and (iii) that there might be a loss in doing so. It was then argued that even if that knowledge were shown not to have existed in fact or to have properly been imputed to the defendant, none the less the plaintiff could bring himself within the first rule, as held by Humphreys, J. In his, Tucker, L.J.'s view, the evidence was quite insufficient to bring the case within the second rule in *Hadley* v. *Baxendale, supra,* and it clearly did not come within the first rule. Humphreys, J., appeared to have treated the case as if it were one for the sale and purchase of shares in the Argentine railway company, and to have held that the plaintiff was acting reasonably when he bought back the shares, which would have been a proper test if the contract had been for such a sale and purchase. That was a wrong decision. The plaintiff's claim could not be substantiated according to the principles governing the measure of damages on breach of contract. The appeal succeeded.

COHEN and SINGLETON, L.JJ., agreed.

APPEARANCES: *Salmon*, K.C., and *H. E. G. Browning* (*Gregory, Rowcliffe & Co.*, for *Bedell & Driver*, Manchester); *Jukes* (*Ravenscroft, Woodward & Co.*, for *Staffurth & Bray*, Bognor Regis).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

EXCESS PROFITS TAX: MEANING OF "SUBSIDIARY" COMPANY

Lamb Brothers (Humber Sales), Ltd. *v.* Inland Revenue Commissioners

Croom-Johnson, J. 12th May, 1949

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

Section 17, headed "inter-connected companies," of the Finance (No. 2) Act, 1939, as amended by s. 28 of, and Sched. V to, the Finance Act, 1940, provides by subs. (6) that, for the purposes of s. 17, as amended, "a body corporate shall be deemed to be a subsidiary of another body corporate if and so long as not less than nine-tenths of its ordinary share capital is owned by that other body corporate . . ." The appellant company contended that, on the true construction of that subsection, it was not a condition precedent to one company's being a subsidiary of another within the meaning of s. 17 (6) that the other company should hold nine-tenths of its ordinary shares, and that the definition was not exclusive. The Special Commissioners held that it was an exclusive definition, and decided the case on that basis. The company appealed.

CROOM-JOHNSON, J., said that the argument of the company made reference to s. 154 of the Companies Act, 1948, subs. (1) of which provided that "a company shall . . . be deemed to be a subsidiary of another if, but only if" certain conditions as to control by the holding of share capital were fulfilled. The argument was that the words "only if" were absent from s. 17 (6) of the Act of 1939 as amended; that the exclusiveness of definition for which the Special Commissioners had decided required the addition of the words "only if" in s. 17 (6) just as they had been found necessary in s. 154 (1) of the Act of 1948; and that they ought not to be read into s. 17 (6). The argument was ingenious, but s. 17, as amended, was drafted in extremely wide terms. The condition laid down in s. 17 (6) relating to the holding of nine-tenths of the share capital was the only condition prescribed in the subsection. It ought, therefore, to be construed as an exclusive definition, as the Special Commissioners had held. There appeared to be no authority on the construction of the subsection. Appeal dismissed.

APPEARANCES: *Lyon Blease* (*Bartley, Cocks & Bird*); *Mitchison*, K.C., and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

EXCESS PROFITS TAX: CONTROLLING INTEREST IN COMPANY

Inland Revenue Commissioners *v.* Monnick, Ltd.

Croom-Johnson, J. 18th May, 1949

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

One Monnickendam and another man were the directors of the respondent company. Between them they held one-half of the 2,000 issued 1s. founder shares of the company. The company was incorporated in February, 1941. In September, 1941, the two directors, under power given by art. 85 of the articles of association (Table A), resolved to delegate all the powers vested in the directors in Monnickendam, who was accordingly in effect the sole director of the company. In addition there was a manager who must be deemed to be a director for excess profits tax purposes, though not one in fact. The Special Commissioners held that, for excess profits tax purposes, the directors had no controlling interest in the company. The Crown appealed.

CROOM-JOHNSON, J., said that he agreed with the contention advanced for the company that a controlling interest in the affairs of the company meant a controlling interest to be exercised by votes at general meetings of the shareholders so that a decision should bind the company. As was shown by the speeches of Lord Russell of Killowen and Lord Macmillan in *J. Bibby & Sons, Ltd.* v. *I.R.C.* (1949), 29 Tax Cas. 167, at pp. 180 and 181, and that of Lord Simonds at p. 184, he (his lordship) must consider the powers of voting in the company at a general meeting given by the articles. They provided that "the chairman, if any, of the board of directors, shall preside as chairman at every general meeting of the company." The Crown therefore argued that the directors had merely to appoint a chairman, who would then *ipso facto* be chairman at every general meeting and able, by means of his casting vote, to control the destinies of the company, and that was enough to establish that the directors had a controlling interest. He (his lordship) did not agree: the relevant article said "the chairman, if any," and he could not shut his eyes to the fact that there never was a chairman of this company, or anyone empowered to act as such. If the company had had a board of directors—which it had not—that board had appointed a chairman, and that chairman had happened to be Monnickendam, the result would have been that Monnickendam would have been in control of the company. But the words "if any" in his (his lordship's) opinion dominated the whole of the article in question. The articles also empowered the directors to elect a chairman of their meetings, and to determine the period for which he was to hold office. The manager who was deemed to be a director for the purposes of excess profits tax was not a director for the purposes of the Companies Act. A quorum was two directors. There was no board of directors. Therefore, there was no one who could elect a chairman. It was to be observed that one Izak Monnickendam, who was the father of some, at any rate, of the corporators of the company, took the chair at every general meeting, being appointed to do so at each meeting. It was of no use to speculate as to the reasons for that; but to the inquiry whether, in truth and in fact, apart from the powers conferred by the company's articles, the directors had a controlling interest, the answer was that they had not. The corporators had power, if they chose, so to arrange their affairs that they might have had a board of directors; and that board might have exercised the power to appoint a chairman of the company. If there had been a chairman, as, *ex necessitate*, he would have been a director, he might have controlled the company. Appeal dismissed.

APPEARANCES: *Grant*, K.C., *J. H. Stamp* and *Hills* (*Solicitor of Inland Revenue*); *Graham-Dixon* (*Rubinstein, Nash & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

REVENUE : STAMP DUTY : EXEMPTION

Attorney-General *v.* London Stadiums, Ltd.

Lord Goddard, C.J. 11th July, 1949

Preliminary point of law set down for trial under R.S.C. Ord. XXV, r. 2.

The defendants, London Stadiums, Ltd., were incorporated on 29th April, 1946, with a nominal capital of £100, divided into 1,000 shares of two shillings each. The object of the company's formation was that it should acquire and amalgamate the undertakings of three companies owning greyhound racing tracks. The capital of the defendant company was then increased to £750,000, and of its resulting 7,500,000 two shilling shares, 7,480,000 were allotted to the three companies in payment for the acquisition of their undertakings. The agreement of amalgamation was presented for adjudication of stamp duty to the Inland Revenue Commissioners who granted relief under s. 55 (1) of the Finance Act, 1927, but subject to s. 55 (6). The effect of that subsection was that if the three companies should within two years of the defendant company's increase of capital " cease to be the beneficial owner of the shares " issued to them by the defendant company, the exemption would be forfeited and the Crown could reclaim the unpaid stamp duty from the defendant company. On 5th November, 1946, the three companies sold to a firm of stockbrokers a total of 2,000,000 of the one shilling shares into which part of the two shilling shares had been sub-divided, and the stockbrokers shortly afterwards sold the shares to the public. The Inland Revenue Commissioners thereupon brought this action against the defendants by the Attorney-General, under s. 55 (6), claiming the amount of the stamp duty which had been excused. The issue now came for trial, as a preliminary point of law, whether, on the true construction of the subsection, the defendants were liable to make the payment claimed.

Lord Goddard, C.J., said that his view of the construction of s. 55 (6) was the same as that of Lord Greene, M.R., in *Lever Brothers, Ltd.* v. *Inland Revenue Commissioners* [1938] 2 K.B. 518. As for the true construction of the words " ceases to be a beneficial owner of the shares so issued to it," the defendants had contended for insertion of the word " all "—" owner of all the shares so issued "—and argued that, as the three companies did not sell all the shares in the defendant company which they had acquired, s. 55 (6) did not apply and the defendants still remained exempt from stamp duty. It was further argued that, for the Crown to succeed, the court would on the other hand have to read the words as " ceases to be the beneficial owner of the shares so issued to it or any of them." In his view it was unnecessary to add any words to the subsection. Section 55 concerned what might be called a genuine amalgamation of companies. It contemplated that if a company in the position of the defendants was to have the very substantial benefit by way of relief from heavy stamp duty, the company to which its shares were transferred must keep them. The exemption granted by s. 55 was not meant to facilitate the creation of a market in shares, but the genuine amalgamation of businesses which were to remain amalgamated for at least two years. Giving the full effect to the rule of construction that if there were an ambiguity in a taxing Act, it must be resolved in favour of the taxpayer—and assuming that in what was an exception to an exception that rule would apply, he (his lordship) failed to find any ambiguity here. It was impossible to say that, where a person parted with some of the shares that had been issued to him, he remained the beneficial owner of the shares so issued. Preliminary objection dismissed.

Appearances : *Sir Andrew Clark*, K.C., and *J. H. Stamp* (*Solicitor of Inland Revenue*) ; *Millard Tucker*, K.C., and *John Clements* (*Kenneth Brown, Baker, Baker*).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 14th July :—

Alexander Scott's Hospital Order Confirmation.
City of London (Various Powers).
Harwich Harbour.
House of Commons (Indemnification of Certain Members).
Lands Tribunal.
Merchant Shipping (Safety Convention).
People's Dispensary for Sick Animals.
Royal Alexandra and Albert School.
Royal Bank of Scotland Officers' Widows' Fund Order Confirmation.
Superannuation.
Teignmouth and Shaldon Bridge.
U.S.A. Veterans' Pensions (Administration).

The following Measures received the Royal Assent on 14th July :—

Church Dignitaries (Retirement).
Parochial Church Councils (Powers) (Amendment).
Pastoral Reorganisation.

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Ashdown Forest Bill [H.C.]	[12th July.
Colonial Development and Welfare Bill [H.C.]	[11th July.
Colonial Loans Bill [H.C.]	[11th July.
Dartford Tunnel (Extension of Time) Bill [H.C.]	[11th July.
Docking and Nicking of Horses Bill [H.C.]	[11th July.
Finance Bill [H.C.]	[13th July.
Housing (Scotland) Bill [H.C.]	[14th July.
Law Reform (Miscellaneous Provisions) Bill [H.C.]	[11th July.
London County Council (General Powers) Bill [H.C.]	[12th July.
Marriages Provisional Orders Bill [H.C.]	[11th July.
Ministry of Health Provisional Order (Chichester) Bill [H.C.]	[11th July.
Ministry of Health Provisional Order (Macclesfield) Bill [H.C.]	[11th July.
Ministry of Health Provisional Order (Morley) Bill [H.C.]	[11th July.
Ministry of Health Provisional Order (South Molton) Bill [H.C.]	[11th July.

Read Second Time :—

Adoption of Children Bill [H.C.]	[11th July.
Justices of the Peace Bill [H.L.]	[12th July.
Slaughter of Animals (Scotland) Bill [H.C.]	[14th July.

Read Third Time :—

British Transport Commission Bill [H.C.]	[13th July.
Civil Aviation Bill [H.C.]	[14th July.
Licensing Bill [H.C.]	[14th July.
Representation of the People Bill [H.L.]	[14th July.
Rhodesia Railways Limited (Pension Schemes and Contracts) Bill [H.L.]	[12th July.

In Committee :—

Legal Aid and Advice Bill [H.C.]	[11th July.
Married Women (Restraint upon Anticipation) Bill [H.L.]	[14th July.

B. Debates

In moving the Second Reading of the **Married Women (Restraint upon Anticipation) Bill**, the Lord Chancellor said it would carry one step further the process of removing the inequalities between men and women which had survived from the old Common Law of England. It was not part of the Government's original legislative programme, but arose because certain Members of the House of Commons felt that the Mountbatten Estates Bill would remove from one particular woman hardship which ought to be removed generally from all women who suffered from it. Having considered the matter he had come to the conclusion that the restraint upon anticipation was a hardship in practically every case in which it applied. These restraints arose from the common law position that a husband obtained control of all the wife's property whether it came to her before or during marriage and could do what he liked with it. From the sixteenth to the eighteenth centuries inroads had been made on this right by successive Lord Chancellors, and it had become the practice to give property to trustees on her behalf. This, however, involved the proposition that she could dispose of such property as a single woman, which again put her property at the mercy of her husband. Again Chancery came to the rescue. Lord Thurlow had devised these restraints, and Lord Eldon had established them as valid, whereby a wife was restrained from disposing of her future income. After the Married Women's Property Act, 1882, when all the property of a married woman became her separate estate, the scope of these

restraints had become very wide indeed, and what had been devised as a protection had come to be regarded as an anachronism by those interested in the emancipation of women. In 1934, a Law Revision Committee under the chairmanship of Lord Sankey had recommended the abolition of restraints for the future, but had not interfered with those already existing. The report had pointed out that these restraints often prevented a married woman from obtaining the necessary capital to set up in a profession or in business. At that time a number of women's organisations had pressed for the Law Reform (Married Women and Tortfeasors) Act, 1935, to be made retrospective but without success. They had pointed out that for another fifty or sixty years these particular women would have the humiliation of having to apply to the court for permission to dispose of their own property, whereas younger women would not have to do so. Lord Jowitt compared the position of the two women. The younger married woman if she thought fit could raise a little money by pledging or selling part of her future income, or, if her children were of full age, by agreeing with them that some of the trust funds should be sold and divided between them in equal proportions; the older woman could do no such thing so long as she remained married. If her husband died or if they were divorced she regained her freedom to do as she liked with her money—until she remarried. If the Mountbatten Estates Bill had been enacted, it would have been followed by a succession of similar bills by all who could afford the expensive procedure, and having passed the one, how could they have objected to the others? Only those unable to afford the expense or who were relying on the restraint to keep their creditors at bay would put up with the continued existence of the restraint. The present Bill's effect on the Exchequer would be purely incidental. If a man or woman not subject to restraint chose to give away or spend half of his or her property there would be less to tax, but the Inland Revenue Commissioners would go on their way, taxing what they found and not taxing what was not there. But if a person gave property away to avoid death duties and died within the next five years, of course the property would still be liable to death duties, but that affected everybody, not merely married women. He thought that any pre-1936 settlor who could see to-day how his restraint was working would say: "Had I known this I would never have imposed the restraint."

LORD SIMON said that any solicitor who was really skilled in his business knew that in the case of a man, property settled on him could be protected from the beneficiary's recklessness or gambling habits by the simple imposition of "discretionary trusts," by providing for its forfeiture if he should, for example, become bankrupt or attempt to dispose of the property. Indeed that could also be done in the case of a woman also. Now the present Bill did not touch discretionary trusts, so how was it doing justice between men and women as the Lord Chancellor had claimed? Lord Thurlow had invented the restraint on anticipation in the interests, Lord Simon believed, of a relation of his, and it was very useful. The money had not been earned by the woman by her own efforts, indeed it was often provided by her parents in modest sums on her marriage. There were hundreds of thousands of these restraints still effective, and this Bill, if it became law, would alter every one of them. He thought it the most flagrant example of retrospective legislation of which he had ever heard.

LORD MAUGHAM said he thought Lord Jowitt's description of the restraint on anticipation was perfectly correct and referred noble lords to Holdsworth's History of English Law, vol. 12, p. 324. So far as Lord Simon's argument was concerned, the law had always regarded a fetter placed on the way in which a *man* should use his property as repugnant and therefore void. But in the case of *married women* it had become possible by means of these restraints on anticipation to fetter her use of her own property. That was not common law at all, so that common lawyers might not fully understand it. All the authorities in this matter were usefully dealt with in Lord Cottenham's decision in *Milne* v. *Craig*. He wanted to point out that it was entirely wrong to suppose that the doctrine of discretionary trusts had, as Lord Simon had supposed, any resemblance whatever to the restraint on anticipation. In the latter you definitely restricted the woman's use of her property, in the former you did not—you gave a man unrestricted use *until* he did something forbidden, e.g., until he went to Rome, or until he got his hair cut. That was not a restraint on anticipation, it was a loss of his property if the trustees, in the event, handed it back to the settlor. LORD SIMON asked was it not a restriction on alienation to say a man should have property until he tried to dispose of it? LORD MAUGHAM said it certainly was not; it gave the man a limited property, not a limited enjoyment. Lord Maugham then went on to criticise the drafting of cl. 1 (1) of the Bill, which reads: "No restriction upon anticipation or alienation attached or purported to be attached to the enjoyment of any property by a woman which could not have been attached to the enjoyment of that property by a man shall be of any effect after the passing of this Act."

That was an interesting piece of law, but was absolutely ridiculous to a lawyer, because of course the restriction of anticipation during coverture could not possibly affect a man and, therefore, the words were not good. In conclusion, Lord Maugham said the Bill would put women into exactly the same position as men had been in for hundreds of years. They could both be made subject to discretionary trusts. He was wholly unable to see any injustice in the measure even though it was retrospective.

LORD SWINTON thought it would have been better to give the court power to remove the restraints in cases where they were satisfied it was in the interests of the woman rather than to do it wholesale by Act of Parliament. LORD READING said he found it difficult to agree with Lord Simon that discretionary trusts were similar to restraints.

The Bill was read a second time and passed into Committee. [5th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Isle of Man (Customs) Bill [H.C.] [13th July.
To amend the law with respect to Customs in the Isle of Man.

National Insurance Bill [H.C.] [15th July.
To substitute a new condition for the first of the contribution conditions for death grant set out in para. 5 of Sched. III to the National Insurance Act, 1946.

Read Second Time :—

Dover Harbour Bill [H.L.] [11th July.
Overseas Resources Development Bill [H.C.] [15th July.

Read Third Time :—

Prevention of Damage by Pests Bill [H.L.] [15th July.

B. DEBATES

On the Report Stage and Third Reading of the **Law Reform (Miscellaneous Provisions) Bill,** the SPEAKER stated that he had decided not to select for discussion, as it was controversial, Lieut.-Col. Lipton's new clause proposing that seven years' separation should be a ground for divorce. An amendment proposed by Mr. MANNINGHAM-BULLER was adopted limiting to children of the marriage only the power of the High Court to make maintenance orders in respect of children whom a husband had wilfully neglected to maintain. He pointed out that now, under s. 42 (1) of the National Assistance Act, 1948, a man was no longer under an obligation to maintain his step-children and hence could not be guilty of wilful neglect of them. The ATTORNEY-GENERAL said he particularly welcomed cl. 1, which would enable a married woman long resident in this country to petition for divorce although her husband was domiciled outside the British Isles. Mr. E. FLETCHER said that this clause did not in fact follow the recommendations of the Denning Report in that it imposed a most unnecessary restriction on the woman by providing that she had to have been ordinarily resident in this country for the three years preceding the commencement of proceedings. He thought the wife should have the right to petition if she had been ordinarily resident here immediately before the marriage. Mr. GAGE said it should be remembered that this clause would also enable a French or a German woman to divorce her husband here if she had been resident for three years. He wondered whether something should not be done for a husband who might be domiciled in one of the Dominions but who had resided here for three years. He would be denied the rights now afforded to his wife. Another clause, giving the court power to vary maintenance orders in the event of re-marriage, would mean that orders for security would no longer mean what they said. He welcomed the abolition of the rule in *Russell* v. *Russell*, but doubted whether the clause as at present worded would achieve that object.

Mr. SIDNEY SILVERMAN said he thought the rule in *Russell* v. *Russell* was a very good rule and its proposed abolition a retrograde step. Mr. MANNINGHAM-BULLER said he thought Mr. Fletcher was under a misapprehension in his proposal that cl. 1 should apply to people ordinarily resident in England before the marriage. Such an alteration would, in fact, limit the scope of the Bill since, as it now stood, it could be used by people who did not marry in

England and who were not ordinarily resident there before marriage. He would, however, consider the possibility of its being made to apply to a wife ordinarily resident here before the marriage without her having to wait the three years. As regards alien women coming here for divorce—if they had been deserted then no harm was done, but if they were the deserting spouse he could hardly see the courts giving them a divorce—they would have to disclose their own matrimonial history. Sir PATRICK HANNON expressed his disapproval of the Bill inasmuch as it increased the facilities for divorce, but Lieut.-Col. LIPTON felt that it would be welcomed by all who took an interest in this important social problem. He thought, however, that such piecemeal amendment of the divorce laws was undesirable. Our present divorce law was a mixture of inhumanity and humbug and the sooner a Royal Commission was appointed to go into the whole matter, the better. [8th July.

In moving the Second Reading of the **House of Commons (Indemnification of Certain Members) Bill.** Sir HARTLEY SHAWCROSS said some might think the Government had erred on the side of caution in seeking to protect the independence of Members and in avoiding the evils of placemen and so forth. The laws concerned with this Bill were mainly embodied in ss. 24 and 25 of the Succession to the Crown Act, 1707, and they were very obscure. There was no precise definition of what was meant by "an office of profit." They had taken the view that there was such an office wherever there was a payment which constituted a fair reimbursement or free assessment of the expenses actually incurred through holding that office. Then there was the other question, in relation to new offices, whether they were held *under* the Crown within the meaning of s. 24, or were held *from* the Crown, and there was room for argument as to whether there was a legal difference between the two phrases. They had taken the view that to be held under the Crown an office did not necessarily have to be subject to any continuing control in its exercise by the Crown. He thought the words in s. 24 referred comprehensively to any new office connected with the public service or the appointment of which was in the hands of some authority under the Crown. The words "from the Crown" in s. 25 might, on the other hand, imply an office which had been within the immediate grant of the Crown.

The Government's attention had been drawn to the position of two Members who had been appointed by the King to become members of the General Medical Council. It was true its members were paid, not out of State funds, but out of subscriptions collected by the medical profession from registration fees, but he thought the source of the emoluments did not affect the question as to whether an office was an office of profit under the Crown. For many years Members had sat on this Council without it occuring to anyone that an infringement of the Act of 1707 might be involved, but they were quite safe as any possible actions against them would now be Statute barred. This Bill would indemnify the two Members affected, but in future it would be impossible for Members of Parliament to be appointed to this office.

The second clause of the Bill came under the House of Commons (Disqualifications) Act, 1782, whereby a member was disqualified from holding any contract from the public service. Here again the law was obscure. It did not ordinarily apply to members who were directors of or shareholders in a public company, unless possibly they were remunerated in a peculiar way out of the profits of the actual transaction. Neither did it apply to casual or isolated transactions which were small in amount, on the principle *de minimis non curat lex*. Mr. Evans was a partner in a firm styled Evans Bros., and it had received orders for labels from the Home Office amounting in all to about £100 over a period of some months. This firm had offered the earliest delivery at competitive prices and all was quite proper. Mr. Evans had not realised that although the Statute did not apply at all to a one-man company, it did apply to a many-man partnership.

It was not proposed by this Bill to alter the law at all but merely to indemnify certain Members. The whole law on this matter would have to be studied by a commission or legal committee, and the Government was considering whether there was any comprehensive way in which the matter could be dealt with. Mr. R. A. BUTLER said that apart from *Pringle's* case in 1924, all the authorities supported the view that the receipt of remuneration by a holder of office under the Crown was immaterial provided the office was one in respect of which remuneration was payable. In 1941 a Select Committee had recommended that, except for 60 ministerial offices, any office from or under the Crown should disqualify from membership of the House of Commons. Mr. BING thought these laws clearly obsolete and a nuisance inasmuch as Members had to waste parliamentary time on Bills such as this and the laws exposed Members to actions in the courts which might set the courts at variance with the House. At a General Election these laws might be used to attack a large number of candidates. There were some 150 statutes capable of being invoked to disqualify a Member. Large numbers of clergymen were also disqualified from sitting by these obsolete laws. In reply, the ATTORNEY-GENERAL said the points which had been made would be considered, as indeed, would the question of the whole of this branch of the law. [12th July.

C. QUESTIONS

Mr. HERBERT MORRISON stated that, following on the proposed repeal of the Local Government (Boundary Commission) Act, 1945, it was open to the council of an urban district to submit a petition for incorporation under s. 129 of the Local Government Act, 1933, but in present conditions he could hold out no hope that His Majesty would be advised to grant a charter save in very exceptional circumstances. [11th July.

Sir STAFFORD CRIPPS stated that the purchase tax could not be used as an instrument to prevent owners of houses from selling them with vacant possession at excessive prices. [12th July.

In reply to a question by Sir JOHN MELLOR as to why 31st May, 1949, had been selected as the date on which the emergency which had occasioned the passing of the Control of Employment Act, 1939, came to an end, having regard to the continuance in force of the Control of Engagement Order, Mr. NESS EDWARDS said that the Control of Employment Act, 1939, was an early war-time Act which was terminated in May, 1949, as part of the programme for bringing to an end war legislation which was no longer needed. This Act had no connection with the Control of Engagement Order at present in force which was made under the Supplies and Services (Transitional Powers) Act, 1945, as extended by the Supplies and Services (Extended Purposes) Act, 1947, to deal with economic difficulties arising after the war. [14th July.

STATUTORY INSTRUMENTS

Aerated Waters Wages Council (England and Wales, (Constitution) Order, 1949. (S.I. 1949 No. 1284.)

Agricultural Goods Vehicles (Temporary Relief from Duty) Order, 1949. (S.I. 1949 No. 1249.)

Borstal (No. 2) Rules, 1949. (S.I. 1949 No. 1283.)

These rules are made under s. 52 of the Criminal Justice Act, 1948, and form a complete code for the regulation of Borstal Institutions. The objects of the training are stated to be "to bring to bear every influence which may establish in the inmates the will to lead a good and useful life on release, and to fit them to do so by the fullest possible development of their character, capacities and sense of personal responsibility."

Caersws—Machynlleth Trunk Road Order, 1949. (S.I. 1949 No. 1295.)

Carrots (Revocation) Order, 1949. (S.I. 1949 No. 1264.)

Cemmaes Road—Mallwyd Trunk Road Order, 1949. (S.I. 1949 No. 1296.)

Draft **Clothing Industry** Development Council Order, 1949.

Coffee Essence (Revocation) Order, 1949. (S.I. 1949 No. 1282.)

Draft **Crop Acreage Payments** (Northern Ireland) Order, 1949.

Draft Crop Acreage Payments (Scotland) Order, 1949.

Emergency Regulations, 1949. (S.I. 1949 No. 1300.)

These regulations are made under the Emergency Powers Act, 1920, to deal with the stoppage of work in the London Docks. The regulations make it an offence thereunder to damage any machinery used in the maintenance of essential services with intent to impair its usefulness, to trespass or loiter on premises used for essential services, or to do any act calculated to induce a member of the Forces or a police constable to withhold his services or to commit breaches of discipline. Power to arrest without warrant is given to any constable on reasonable suspicion of an offence against these regulations.

Exchange Control (Import and Export) Order, 1949. (S.I. 1949 No. 1293.)

Export of Goods (Control) (Amendment No. 4) Order, 1949. (S.I. 1949 No. 1298.)

Fish (Port Allocation Committees) Order, 1949. (S.I. 1949 No. 1297.)

Gas (Conversion Date) (No. 4) Order, 1949. (S.I. 1949 No. 1285.)

Glan-Usk Park (Crickhowell)—Talgarth—Llyswen Trunk Road Order, 1949. (S.I. 1949 No. 1294.)

Local Government (Allowances to Members) (Prescribed Bodies) Regulations, 1949. (S.I. 1949 No. 1286.)

By these regulations certain additional bodies such as licensing

planning committees and certain joint education committees are prescribed as bodies who are entitled to allowances under the Local Government Act, 1948. They further entitle members of local authorities to have these allowances when they are serving on certain other bodies, including universities and fishery boards.

Milk (Non-Priority Allowance) (No. 2) Order, 1949. (S.I. 1949 No. 1287.)

Draft **National Health Service** (Scotland) (Superannuation) (Amendment) Regulations, 1949.

Paper Bag Wages Council (Great Britain) Wages Regulation Order, 1949. (P. 46.) (S.I. 1949 No. 1267)

Paper Box Wages Council (Great Britain) Wages Regulation Order, 1949. (B. 44.) (S.I. 1949 No. 1268.)

Police Pensions (Scotland) Regulations, 1949. (S.I. 1949 No. 1240.)

Postal Order Warrant, 1949. (S.I. 1949 No. 1266.)

Services Laundry (Maximum Charges) Order, 1949. (S.I. 1949 No. 1262.)

Retention of Cables Over and Under Highways (Wiltshire) (No. 7) Order, 1949. (S.I. 1949 No. 1277.)

Retention of Main Under Highways (Wiltshire) (No. 1) Order, 1949. (S.I. 1949 No. 1271.)

Retention of Mains Under Highways (Wiltshire) (No. 8) Order, 1949. (S.I. 1949 No. 1278.)

Retention of Mains Under Highways (Wiltshire) (No. 9) Order, 1949. (S.I. 1949 No. 1279.)

Retention of Main Under Highways (Wiltshire) (No. 10) Order, 1949. (S.I. 1949 No. 1280.)

Retention of Pipes under Highways (Wiltshire) (No. 2) Order, 1949 (S.I. 1949 No. 1272.)

Retention of Pipe Under Highways (Wiltshire) (No. 3) Order, 1949. (S.I. 1949 No. 1273.)

Retention of Pipes Under Highways (Wiltshire) (No. 4) Order, 1949. (S.I. 1949 No. 1274.)

Retention of Pipe Under Highway (Wiltshire) (No. 5) Order, 1949. (S.I. 1949 No. 1275.)

Retention of Pipes Under Highways (Wiltshire) (No. 6) Order, 1949. (S.I. 1949 No. 1276.)

Retention of Pipe Under Highways (Wiltshire) (No. 11) Order, 1949. (S.I. 1949 No. 1281.)

Retention of Pipe Under Highway (Worcestershire) (No. 2) Order, 1949. (S.I. 1949 No. 1299.)

NOTES AND NEWS

Honours and Appointments

The King has approved the appointment of Mr. WYNDHAM MATABELE DAVIES, K.C., as stipendiary magistrate of Pontypridd in succession to the late Mr. Stanley Evans.

Mr. E. W. JARMAN has been appointed solicitor to Epping Rural District Council as from 25th July.

Sir WILLIAM JONES, who recently retired from the office of clerk of the peace and clerk to Denbighshire County Council, has been placed on the commission of the peace for Denbighshire.

Mr. C. A. SMALLWOOD, prosecuting solicitor at Newcastle-on-Tyne, has been appointed senior assistant prosecuting solicitor for Birmingham.

The Lord Chancellor has appointed Sir JOHN HOWARD (formerly Chief Justice of Ceylon) to be legal member and President, except as to Scottish proceedings, and Sir FREDERICK ALBAN, C.B.E., J.P., F.S.A.A., and EDGAR CHARLES ELLEN, Esq., C.B.E., M.C., to be members, of the Gas Arbitration Tribunal to be set up under s.63 of the Gas Act, 1948. The Lord President of the Court of Session has appointed DOUGLAS ALEXANDER MORTIMER, Esq., solicitor, of Dundee, who from 1945 to May, 1948, was full-time Chairman of Pensions Appeals Tribunals in Scotland, to be the legal member of the Tribunal in relation to proceedings which are to be treated as Scottish proceedings. Mr. Mortimer will act as President of the Tribunal in such proceedings.

Miscellaneous

Readers are asked to note that the Probate Library in the Royal Courts of Justice has recently been moved to the East side of the main Hall, near to the Strand entrance.

In the Final Examination of the Society of Incorporated Accountants held in May, 242 candidates were successful, four obtaining Honours; 575 candidates sat for this examination. In the Intermediate examination, 308 candidates out of 602 were successful and fifty-nine candidates out of 130 satisfied the examiners in the Preliminary examination.

The Minister of Town and Country Planning is allowing the London County Council to develop 422 acres of land at Farnham Royal and 264 acres at Langley, Bucks, for housing.

BRITISH ZONE PROPERTY OF NAZI VICTIMS

PROCEDURE IN RESTITUTION CLAIMS

British Zone Law No. 59, dealing with claims for the restitution of identifiable property in the British Zone of Germany to victims of Nazi oppression, came into force on 12th May, 1949. Copies of the Law in English and German are available, price 9d. (by post, 11d.) at H.M. Stationery Office, York House, Kingsway, London, W.C.2, and branches, or through any bookseller.

The following notes are a brief summary of certain parts of the Law only. The Law relates to restitution to persons who suffered deprivation between 30th January, 1933, and 8th May, 1945, and identifiable property, of which a person was unjustly deprived for reasons of race, religion, nationality, political views or political opposition to National Socialism. The right to make a claim for restitution belongs to any person whose property was the subject of unjust deprivation, or his heirs, or other successors in title. One or more trust corporations will be formed under German law for the purpose of claiming unclaimed and heirless property.

The possessor of affected property bears primary liability to make restitution. The filing of a claim under General Order No. 10 is deemed to be the filing of a petition. Sworn declarations of deceased persons are admissible. The Central Office for the Administration of Property shall perform the functions of a Central Filing Agency, which will transmit any petition to the Restituting Agency. The address of the Central Office for the Administration of Property is: Das Zentralamt für Vermögensverwaltung (British Zone), Bad Nenndorf, Land Niedersachen.

If the claimant does not reside in Germany and has not appointed an attorney, he may nominate a person to accept service of process. The Central Filing Agency will notify the claimant of the Restitution Agency of the district in which the affected property is situated.

The Restitution Agency will effect formal service on the parties concerned and require an answer to be filed within two months of service. Where the claim affects land, an entry will be made in the Land Register to the effect that a claim for restitution has been filed.

If no answer is made to the petition within the specified time, the Restitution Agency shall grant the petition. Where the petition does not conclusively disclose a cause of action, the Restitution Agency shall require the claimant to submit a statement within an appropriate period. If no explanation justifying the petition is submitted within this period the Agency will dismiss the petition.

If an amicable settlement is reached the Agency will record the settlement and give a certified copy of the terms of the settlement to the parties concerned. If an amicable settlement cannot be reached, the case will be referred to the Restitution Chamber of the Landgericht.

Any party may file an appeal with the Agency to the Restitution Chamber against a decision of the Agency within one month, or, if the appellant resides in a foreign country, within three months.

Agreement recorded by the Agency and orders of the Agency which are no longer subject to appeal may be enforced by execution under the provisions of the Code of Civil Procedure.

A Board of Review appointed by Military Government may review all decisions and orders and nullify, amend or suspend them. No court fees will normally be charged in proceedings before Restitution Authorities.

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